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April 12, 1996

Via Facsimile and Federal Express

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments on March 8, 1996 NPRM
on Universal Service Support Issues
CC Docket No. 96-45
Our File No. 8323-6734-3

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Dear Mr. Caton:

Enclosed for filing please find an original and four copies of the comments of a group of Small Western LECs in response to the Commission's NPRM issued on March 8, 1996, in the captioned docket.

Copies of this document are being mailed to each member of the Federal State Joint Board and its staff as indicated on the service list attached to the NPRM. Copies are also being addressed to each Commissioner and to the International Transcription Service.


Due to the circumstance of our office being located in San Francisco, we are delivering a facsimile copy of this filing today. The original signed copy will be delivered by overnight express for inclusion in the formal file of the proceeding.

Sincerely,

BECK & ACKERMAN


Jeffrey F. Beck

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Enclosures

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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In the Matter of)
)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45

COMMENTS

OF

**EVANS TELEPHONE COMPANY
HUMBOLDT TELEPHONE COMPANY
KERMEN TELEPHONE CO.
OREGON-IDAHO UTILITIES, INC.
PINNACLES TELEPHONE CO.
THE PONDEROSA TELEPHONE CO.
THE SISKIYOU TELEPHONE COMPANY
THE VOLCANO TELEPHONE COMPANY**

ON MARCH 8, 1996, NPRM ON UNIVERSAL SERVICE SUPPORT ISSUES

Dated: April 12, 1996

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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**COMMENTS ON MARCH 8, 1996, NPRM
ON UNIVERSAL SERVICE SUPPORT ISSUES**

Evans Telephone Company, Humboldt Telephone Company, Kerman Telephone Co., Oregon-Idaho Utilities, Inc., Pinnacles Telephone Co., The Ponderosa Telephone Co., The Siskiyou Telephone Company, and The Volcano Telephone Company (the Small Western LECs) respectfully file their Comments in response to the Commission's March 8, 1996, Notice Of Proposed Rulemaking (NPRM) in the above-captioned proceeding.

The Small Western LECs are small independent local exchange carriers serving rural areas in the states of California, Nevada, Oregon, and Idaho. They are each the "carrier of last resort" providing service to residential and small business customers throughout their respective service territories, even those located in the most remote regions. As local exchange service providers in high cost areas, the Small Western LECs are directly impacted by the Commission's universal service policies and by the changes in those policies that will be required to bring them into conformance with the requirements of the Telecommunications Act of 1996 (the "1996 Act").

Each of the commenting parties is a recipient of USF funding, which pays a substantial portion of the cost of providing service to subscribers in their rural territories. The availability of interstate USF assistance has been a critical element in their facilities planning and in the infrastructure investments they regularly make in fulfillment of their carrier of last resort obligations.

Each of the Small Western LECs also utilizes DEM weighting in the recovery of its local switching costs. This assistance is critical to the recovery of these costs, which are relatively higher on a per-access-line basis for companies with small local exchange size. The DEM weighting program will continue to be important to small LECs as the evolution of the "competitive" local exchange network continues to impose additional costs on small LECs to enhance and reconfigure their switching and signaling capabilities to account for developments that are occurring primarily in urban markets.

These Comments will focus on universal service issues specifically affecting "Rural Telephone Companies" as defined in the 1996 Act rather than attempting to address the full range of issues in the NPRM. The Comments will demonstrate that the Commission's existing USF and DEM weighting programs for Rural LECs are consistent with the 1996 Act and should be retained as the foundation of the Commission's universal service policies for Rural LECs.

I. INTRODUCTION.

Section 254(a)(1) of the 1996 Act¹ charges the new Joint Board with the task of recommending "...changes to any [Commission] regulations in order to implement Sections

¹Statutory citations throughout these Comments will refer to sections of the Communications Act as amended by the 1996 Act.

214(e) and [Section 254], including the definition of the services that are supported by Federal universal support mechanisms...." Prior to enactment of the 1996 Act, the Commission had commenced a rulemaking proceeding in CC Docket No. 80-286 to consider possible changes to its universal service policies.²

The 1996 Act has now furnished specific guidance to the Commission and Joint Board on several topics addressed in the 1994 NOI and 1995 NPRM in CC Docket 80-286, particularly with respect to universal service support policies in rural and high cost areas³ and areas served by the defined group of "Rural Telephone Companies" described in section 214(e). These provisions were included in the 1996 Act as part of a package of "rural safeguards" for the specific purpose of preventing rural areas (and particularly rural areas served by small local exchange carriers) from losing the support necessary to maintain universal service in their high-cost areas as the competition authorized by the 1996 Act was implemented.

The impetus for adoption of these rural safeguards was the fact that service providers in a competitive marketplace will naturally focus their efforts on the highest-revenue and lowest-cost areas. This unalterable economic fact of life has the potential of creating a class of telecommunications "have-nots" in rural areas. The rural safeguards of the 1996 Act direct the Commission to establish policies that will avoid this result.

²Paragraph 39 of the NPRM specifically incorporates into the record of the instant proceeding the Comments and other submissions in the 1994 and 1995 proceedings in CC Docket No. 80-286. The record thus includes the Comments and Reply Comments filed by these commenting parties in response to the NOI and NPRM. For ease of reference, copies of our Comments and Reply Comments to the 1995 NPRM are included as attachments to the service copies of this pleading but are not included in the formal file copies.

³Sections 254(a)(3) and 254(a)(4).

Many of the commenting parties in the prior NOI and NPRM on universal service issues in Docket 80-286 proceeded from the assumption that the primary policy goal was competition and that universal service policies had to be modified so that competition was not impeded. The 1996 Act has made it clear that the Commission's universal service policies are not to be driven solely by a so-called "competition agenda." Instead, the universal service policies of the 1996 Act are to take precedence over theoretical niceties of the perfectly "level playing field."

If competition alone were the answer to all telecommunications needs, the rural safeguards of the 1996 Act would not have been necessary. The legislation, however, has created a supervening set of rural service priorities, which must be accomplished through the Commission's universal service policies, even though they do not replicate conditions that would prevail in a *laissez faire* marketplace.

These comments will review the specific statutory requirements that constitute the package of "rural safeguards" and will then address the specific universal service policies required to achieve those goals.

II. POLICY MANDATES OF THE RURAL SAFEGUARDS IN THE 1996 ACT.

The 1996 Act requires universal service policies that will provide customers in rural and high cost areas with access to advanced telecommunications services levels at rates deemed "comparable" to urban rates for such services. The Act further recognizes the need for special consideration of the circumstances of small local exchange carriers serving rural and high cost areas, both in universal service policies and in requirements for interconnection and resale.

A. COMPARABLE ACCESS TO ADVANCED SERVICES.

Section 254 (b) of the Communications Act has been amended by the 1996 Act to require

that the Commission's Universal Service policies must specifically provide for

Access to advanced telecommunications and information services... [Sec. 254(b)(2)]; and

...access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas...[Sec. 254(b)(3)].

It is not coincidental that these requirements for rural access standards are set forth in a statutory enactment introducing market-wide competition. They are in the 1996 Act because the Act introduces competition and, further, because competition in the absence of specific universal service rural safeguards would not maintain adequate access for high cost rural areas to the evolving services of the technological revolution in telecommunications.

The rural access standards are not intended as a mere "wish list" that may or may not come about as the competition mandated by the 1996 Act develops. Instead, they are a specific list of never-before-adopted requirements for urban and rural service standard comparability that are not secondary to some presumed over-arching reverence for the competitive marketplace. They represent the fundamental policy underpinnings by which the Commission's universal service policies must be judged. They are a list of objectives that Congress presumed would not be achieved by merely authorizing competition and which would, instead, require specific action by the Commission because of the introduction of competition and market forces. These standards require policies that will preserve and maintain the quality of rural telecommunications infrastructure in order that rural residents will have access to the evolving telecommunications technology of the information age.

B. RATE AVERAGING AND RATE COMPARABILITY

The 1996 Act contains two provisions addressing urban/rural rate averaging. Section 254(b)(3) requires "comparability" in urban and rural rates for subscriber access to telecommunications services, "including interexchange services and advanced telecommunications and information services that are reasonably comparable to (urban) services." Section 254 (g) requires geographic rate averaging by interexchange carriers. As with the provisions discussed above addressing comparable access facilities, these standards for rural/urban rate averaging are present in the legislation to counteract the result of the competitive marketplace where prices would otherwise "be driven to cost." Regulatory action is, instead, required so that (1) rural prices for local and access services are maintained within a "comparable" range of urban prices and (2) geographic toll rate averaging is required for interexchange services.

C. SPECIFIC POLICIES AFFECTING LECS DEFINED AS "RURAL TELEPHONE COMPANIES".

The 1996 Act recognizes the particular circumstances of the small LEC serving a high cost rural area by creating specific rules applicable to universal service and interconnection policies for "Rural Telephone Companies."⁴ Those policies

- create a distinction that requires a specific state commission proceeding and a finding of public interest before a second carrier can become eligible to receive universal service support in a rural telephone company's territory;
- defer interconnection and unbundling obligations until receipt of

⁴Sections 153 (47), 251(f), 254(e), and 241(e)(2).

a bona fide request that is judged by the state commission to be not unduly burdensome, technologically feasible and consistent with universal service principles; and

-provide a special procedure whereby a rural telephone company can request suspension or modification by a state commission of all obligations for interconnection, unbundling, resale, number portability and dialing parity upon a showing of necessity and public interest.

These policies for Rural Telephone Companies reflect Congress' judgment that small rural LECs require special consideration that is not needed by the larger, geographically-diversified LECs. Unlike the RBOCs and other large LECs, small rural LECs do not have the low-cost urban customer base necessary to accomplish "internal" cost and rate averaging. Rural LECs also lack the wide range of service diversification typical of larger LECs and are therefore more susceptible to policy changes affecting their existing patterns of cost recovery. Rural LECs not "poised" to enter the interLATA, interstate and international telecommunications markets (with the sanction of the 1996 Act or otherwise), nor will they become "competitors" of the large, multistate and multinational interchange carriers in the same sense as the RBOCs will compete with AT&T and MCI.

For these and other policy reasons, Congress has provided a special set of rules affecting interconnection and universal service policies for rural LECs. These policies require the introduction of competition to be accompanied by special protection of the communications needs of the rural residents and small businesses in the service territories of rural LECs. The Commission's universal service policies must maintain the infrastructure required to deliver both present and future "advanced" services to high cost rural areas at rates "comparable" to those prevailing in urban areas. The following section of these comments will demonstrate how the

Commission may accomplish those required goals without undue burden upon or interference with the competitive agenda of the 1996 Act.

III. UNIVERSAL SERVICE POLICIES FOR RURAL TELEPHONE COMPANIES UNDER THE 1996 ACT.

The Commission's existing policies achieve universal service objectives by providing interstate USF support for local loop costs in tiers above a national average threshold and for the high switching costs of small LECs through DEM weighting.⁵ Both the USF and DEM weighting programs address the requirements of the 1996 Act for maintaining adequate rural infrastructure to provide for access to advanced services at comparable rates.

The 1996 Act's requirement of high quality access facilities and comparable local rate structures are being achieved under the regulatory policies currently in effect. The telecommunications infrastructure of Rural LECs is currently capable of providing access to advanced technology even in extremely high cost service areas because the USF and DEM weighting programs directly support the capital and operating costs of serving high cost areas. Rate "comparability" is achieved through the combination of state regulatory oversight of rural service rates and the "transfer" of jurisdictionally-intrastate loop and switching costs to the interstate jurisdiction under the accounting rules applicable to LECs receiving interstate USF and

⁵Paragraph 29 of the NPRM refers to the "theory that small telephone companies have higher local switching costs than larger LECs" as the basis of DEM weighting policies. It is fact rather than "theory" that small LEC exchanges have relatively higher local switching costs, as was demonstrated in the Comments filed by GVNW Inc./Management in response to the 1995 NPRM at pages 7-10. The GVNW study clearly demonstrated that small LEC switching costs are four to four and one-half times higher than switching costs for exchanges of 10,000 or more lines.

DEM weighting support.

The central question of the instant NPRM insofar as Rural Telephone Companies are concerned is the extent to which the existing USF and DEM weighting programs should be changed in light of the introduction of competition by the 1996 Act and the 1996 Act's specific universal service policy requirements for rural service standards and rate comparability. Do the existing programs unduly burden interstate services and service providers? Should the existing programs be junked entirely in favor of a completely new approach, or should any adjustments to these programs be limited to incremental changes that can accommodate both the specific universal service requirements of the 1996 Act and the introduction of competition into telecommunications markets?

The policy choice that satisfies the competing considerations of providing universal service support for Rural LECs while accommodating a competitive marketplace is to modify the existing rules to reduce the "burden" of the support programs while preserving the targeting of the programs to support high service costs of carriers which fit within the 1996 Act's definition of Rural Telephone Companies. This approach maintains the support required for rural loop and switching infrastructure for small, high-cost carriers which do not have alternative sources of revenues available to support their high operating costs.⁶

In the 1995 NPRM, the Commission considered possible changes to the assistance

⁶Rural LECs sell essentially two "products", which are local service and access services. The historical antecedent of the present USF and DEM weighting programs was interstate access charges that were "phased down" over a period of years as the USF program was phased in. The net effect of this transition on an industry-wide basis was an access charge reduction of \$7 billion in NTS costs while the USF support of approximately \$700 million in NTS costs was phased in.

formula and threshold levels for USF funding that could reduce the total size of the fund with relatively minor impact on local rates. These adjustments included elimination of support for study areas receiving less than \$1 per month and raising the eligibility threshold to 130% of the national average in loop cost. As shown in data presented in the comments of GVNW Inc./Management in response to the 1995 NPRM, these changes would reduce the cost of the USF program by \$240 million annually with relatively minor revenue impacts per access line.⁷

The Commission should, of course, explore these alternatives in the context of the obligation to maintain comparable urban and rural rate ranges under the 1996 Act and with a further view to rate impacts anticipated to occur from other sources or actions. Such incremental modifications to the existing universal service support mechanism for Rural LECs would, however, reduce the cost of the program while retaining the underlying system of support necessary to meet the service standard and rate comparability requirements of the 1996 Act in high cost areas served by Rural Telephone Companies.

The Commission should also consider the alternative of restricting participation in the existing USF funding mechanism to "Rural Telephone Companies" as defined in the 1996 Act. The universal service funding needs of the larger carriers would be shifted to whatever mechanism the Commission develops for the high cost areas of other large companies. Basing participation in the existing program on the statutory distinction between Rural LECs and other companies is consistent with the provisions of the 1996 Act, which require special proceedings and requirements in order for a second facilities-based provider to become eligible for universal

⁷See GVNW 1995 NPRM Comments at p 38.

service funding in the territory of a Rural LEC. The Act clearly contemplates a "single-wire" scenario in Rural LEC service territories, and the Commission's universal service policies should observe this distinction.

Paragraph 30 of the NPRM asks whether a separations-based universal service funding system for Rural LECs (as advocated in these comments) is consistent with a competitive marketplace. The use of actual costs as the basis of universal service funding for Rural LECs is consistent both with competition in the providing of services and with the requirements of the Act for maintenance of the rural infrastructure necessary to deliver advanced services. The approach of the 1996 Act is to preserve the quality of Rural LEC infrastructure so that it may serve as the access platform for both POTS and the full panoply of "advanced" services as technology evolves. This same Rural LEC infrastructure will also serve as the medium by which multiple-provider "competitive" services will be made available to residents and small businesses in these rural areas. The Act specifically provides for the "competitive" packaging by other market participants of local, long-distance and enhanced service offerings over the Rural LEC service platform through its provision for resale of Rural LEC services-- based on the "comparable" retail rate structure that will prevail in rural areas.⁸

IV. UNIVERSAL SERVICE PROPOSALS FOR "NON-RURAL" LECS AND NEW ENTRANTS.

The NPRM at Paragraphs 31-34 requests comment on alternative cost proxy/voucher systems that have been proposed for universal service funding. These commenting parties

⁸Section 251(c)(4).

addressed the shortcomings of such proposals for Rural LECs in their Comments on the 1995 NPRM in CC Docket 80-286. Proxy/voucher systems are needlessly complex and unnecessary in the areas served by Rural LECs. Any proxy/voucher system that may be considered should be applied only to larger, geographically-diversified LECs. This distinction would also be consistent with the establishment of separate rules for "Rural Telephone Companies" by the 1996 Act.

Proxy or other cost models may well represent the only administratively-feasible method of approximating cost distinctions among the high and low cost exchanges served by large, geographically-diversified LECs. Large LECs do not have exchange-specific cost records or studies that disaggregate their high-cost rural and low-cost urban service areas. Competitive pressures in their low-cost urban areas suggest the need for large LECs to develop cost data that could support establishment of separate pricing structures for their high-cost exchanges as well as a possible system of external funding support for these areas.

Any use of proxy factors for USF funding purposes should, however, be confined strictly to large LECs. The actual, known cost data of small LECs is a better measure of their USF funding needs than any proxy system could be. The potential expansion of federal universal service funding to include a subsidy system for the high-cost areas of large, geographically diversified LECs and their potential competitors does not require a complete revamping of the present system that addresses the much simpler high-cost support requirements of small LECs.

V. COMMENTS ON OTHER TOPICS.

A. RATE "COMPARABILITY".

The requirement of Section 254(b)(3) for rate "comparability" in rural and urban areas

presents a difficult administrative task to the Commission. Historically, local rates have been set by state commissions without the overlay of a federal statutory requirement. For small, rural LECs, the Commission's existing policies have operated to produce "reasonably comparable" rural rates through the USF and DEM weighting programs. These interstate funding programs have offset costs that would otherwise have been jurisdictionally intrastate, which has reduced the remaining burden on local rates. In particular, the USF loop cost funding algorithm calculates the amount of USF in relation to a national average loop cost, which automatically limits the remaining "local rate" portion of the Rural LEC's loop cost to a level directly related to large LEC loop costs. Continuation of these programs for Rural LECs will directly address the rate comparability requirement for this statutory class of carriers.

B. SUPPORT FOR "CORE" SERVICES.

The Commission's list of "core" services set forth in section 16 of the NPRM represents a good definition of basic local service requirements. They do not, however, represent the full range of services to be encompassed within the Commission's universal service policies. In particular, under Section 254(b)(3), the services provided to rural areas at reasonably comparable rates are specifically to include "advanced" services.⁹ For the class of "Rural Telephone Companies", this issue is adequately addressed by the funding of the "high-cost portion" of loop and switching costs through the USF and DEM weighting programs.

⁹Specifically this must include fax lines, second lines, ISDN lines and whatever else customers in urban areas are buying. It will also benefit the "preponderance" of Rural LEC customers who are millionaire ranchers and owners of luxury second, third and fourth vacation homes, thus depriving the intra-Beltway lobbyists for the multinational interexchange carriers of their favorite "whipping person" on universal service issues.

C. STUDY AREA DEFINITION.

Paragraphs 44 and 45 of the NPRM seek comments on the definition of "service area" for Rural Telephone Companies. The clear intent of Section 241(e)(5) is to utilize the entire service area of a Rural LEC as the smallest unit for Commission universal service policies. The Rural LEC's study area is normally coextensive with its service territory within a single state. No reason appears to modify study area definitions to accommodate "competition." The intent of the statute is to protect the Rural LEC from being subjected to piecemeal, "cream-skimming" competition in its lower cost areas and to eliminate "sub-accounting" requirements for calculating universal service support, even though such requirements may become applicable to large LECs as they attempt to define cost differentials between their urban and rural service areas.

D. FUND ADMINISTRATION.

Paragraphs 128 *et seq* of the NPRM seek comment on who should administer interstate universal service funding. The obvious choice is the National Exchange Carrier Association (NECA), which administers the current fund. NECA possesses the experience to handle the complexities of fund administration and does its job in an open and neutral manner. Attempting to administer these funds through a new, untried system would run the risk of replacing order with chaos.

VI. CONCLUSION.

The provisions of the 1996 Act that are particular to "Rural Telephone Companies" furnish clear guidance on universal service policy issues affecting Rural LECs. They validate the approach of the existing USF and DEM weighting programs for Rural LECs, which offer a

simple, fair and direct method of achieving the statutory goals of supporting the infrastructure necessary to maintain quality standards of service within reasonably comparable rate levels. Any modifications to these programs as they affect Rural LECs should be limited to formula changes that are consistent with the requirements of the 1996 Act.

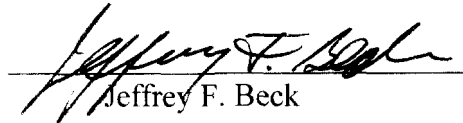
Dated: April 12, 1996

Respectfully submitted,

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